

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

CALLAWAY GOLF COMPANY	)	
	)	
Plaintiff,	)	
v.	)	C.A. No. 06-91 (SLR)
	)	
ACUSHNET COMPANY,	)	<b>PUBLIC VERSION</b>
	)	
Defendant.	)	

**DECLARATION OF BRIAN A. ROSENTHAL IN SUPPORT OF ACUSHNET  
COMPANY'S OPPOSITION TO PLAINTIFF CALLAWAY GOLF COMPANY'S  
MOTION TO DISQUALIFY DEFENDANT  
ACUSHNET COMPANY'S EXPERT DAVID FELKER**

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Acushnet Company*

Dated: January 31, 2007  
Public Version Dated: February 7, 2007  
776717/30030

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

CALLAWAY GOLF COMPANY

Plaintiff,

v.

ACUSHNET COMPANY,

Defendant.

C.A. No. 06-91 (SLR)

**CONFIDENTIAL INFORMATION –  
FILED UNDER SEAL –PURSUANT  
TO PROTECTIVE ORDER**

**DECLARATION OF BRIAN A. ROSENTHAL IN SUPPORT OF ACUSHNET  
COMPANY'S OPPOSITION TO PLAINTIFF CALLAWAY GOLF COMPANY'S  
MOTION TO DISQUALIFY DEFENDANT  
ACUSHNET COMPANY'S EXPERT DAVID FELKER**

I, Brian A. Rosenthal, declare as follows:

1. I am a senior associate at Howrey LLP, representing Acushnet Company (“Acushnet”) in the above-captioned action against Callaway Golf Company (“Callaway”). I am a member of the Bar of the State of New York and the District of Columbia in good standing, and I am admitted *pro hac vice* in this action. I have personal knowledge of the matters stated in this declaration and would testify truthfully to them if called upon to do so.

2. In 2001, Acushnet hired Dr. Felker as an expert in the litigations captioned *Nitro Leisure Products, LLC v. Acushnet Company*, Case No. 02-14008-CIV-Middlebrooks (S.D. Fla.) and *Acushnet Company v. Leisure Products, LLC*, Case No. 02-14091-CIV-Roettger (S.D. Fla.). That case involved Acushnet's ProV1 ball, which is accused of infringement in this case. Dr. Felker spent over 500 hours on that case for Acushnet.


3. Acushnet hired Dr. David Felker as an expert in the litigation captioned *Bridgestone Sports Co. v. Acushnet Co.*, C.A. No. 05-132 (JJF) (D. Del.) on or around June 28, 2005. In that litigation, Bridgestone Sports accuses several Acushnet golf balls of patent infringement, including the ProV1, ProV1\*, and ProV1x, which are the balls

accused of infringement in this case. During the course of that litigation, Dr. Felker has spent substantial time becoming familiar with the details of the golf balls that are accused of infringement in this case. Dr. Felker has spent over 250 hours on the Bridgestone Sports case for Acushnet.

4. Acushnet hired Dr. Felker as an expert in this case on or around December 15, 2006. On December 20, 2006, I sent a letter to Craig Compton, counsel for Callaway, in which I identified Dr. Felker as a consultant pursuant to the Protective Order, and included Dr. Felker's signed Exhibit A to the Protective Order.

5. On December 28, 2006, I received a letter from W. Chad Shear, counsel for Callaway, in which Callaway objected to the disclosure of Callaway confidential information to Dr. Felker.

6. Since retaining Dr. Felker, counsel for Acushnet has never discussed the substantive issues involved in this litigation with Dr. Felker. Since retaining Dr. Felker, Acushnet has not provided any documents produced by Callaway to Dr. Felker. Dr. Felker has performed no work on this litigation, pending resolution of Callaway's motion to disqualify him from this case.





9. U.S. Patent No. 5,803,831 is attached hereto as Exhibit C.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 31st day of January, 2007, at Washington, D.C.

/s/ Brian A. Rosenthal

Brian A. Rosenthal, Esq.

Public Version Dated: February 7, 2007  
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**IN THE UNITED STATES DISTRICT COURT  
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**CERTIFICATE OF SERVICE**

I, David E. Moore, hereby certify that on February 7, 2007, the attached document was hand delivered to the following persons and was electronically filed with the Clerk of the Court using CM/ECF which will send notification to the registered attorney(s) of record that the document has been filed and is available for viewing and downloading:

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I hereby certify that on February 7, 2007, I have Electronically Mailed the documents to the following:

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